

Feb 28, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SCOTT CAIN,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:17-CV-3094-JTR

ORDER GRANTING, IN PART,  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 15, 16. Attorney D. James Tree represents Scott Cain (Plaintiff); Special Assistant United States Attorney Jeffrey Eric Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS, IN PART**, Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

**JURISDICTION**

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on February 20, 2013, alleging disability since May

1 1, 2009, due to depression, sciatic nerve, lower back problems, hernia and anxiety.  
2 Tr. 254. The applications were denied initially and upon reconsideration.  
3 Administrative Law Judge (ALJ) Wayne N. Araki held a hearing on August 17,  
4 2015, Tr. 38-75, and issued an unfavorable decision on January 21, 2016, Tr. 16-  
5 31. The Appeals Council denied Plaintiff's request for review on March 29, 2017.  
6 Tr. 1-6. The ALJ's January 2016 decision thus became the final decision of the  
7 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §  
8 405(g). Plaintiff filed this action for judicial review on May 24, 2017. ECF No. 1.

### 9 **STATEMENT OF FACTS**

10 Plaintiff was born on January 25, 1970, and was 39 years old on the alleged  
11 onset date, May 1, 2009. Tr. 216. Plaintiff completed school through the eighth  
12 grade and completed cosmetology school in 1991. Tr. 44, 255. He has past work  
13 as a cook assistant, hair stylist and warehouse worker. Tr. 255. Plaintiff's  
14 disability report indicates he stopped working on May 1, 2009, because of his drug  
15 use. Tr. 254.

16 Plaintiff testified at the administrative hearing on August 17, 2015, that he  
17 has been homeless off and on for the last 15 years. Tr. 41. Plaintiff had been using  
18 methamphetamines, marijuana and heroin over the last year, but was, at that time,  
19 in detox following a suicide attempt. Tr. 50-52. He stated the triggering event for  
20 his most recent relapse was the November 2014 death of his mother, Tr. 62, and he  
21 had not had more than a month or two of continuous sobriety since he was  
22 discharged from drug treatment in September of 2014, Tr. 53. Plaintiff testified he  
23 stopped taking his mental health medications when using illicit drugs. Tr. 54-55.

24 Plaintiff stated that every day he has feelings of hopelessness, no sense of  
25 direction, nightmares, extreme anxiety, a lack of energy, and "no desire to do life."  
26 Tr. 64. He indicated these symptoms persist during periods of sobriety. Tr. 64.  
27 Plaintiff testified he will begin to get overwhelmed with life stressors and his  
28 response is to use illicit drugs. Tr. 64-65.

## STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

## SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the

1 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),  
2 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds  
3 to step five, and the burden shifts to the Commissioner to show that (1) the  
4 claimant can make an adjustment to other work; and (2) specific jobs which  
5 Claimant can perform exist in the national economy. *Batson v. Commissioner of*  
6 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make  
7 an adjustment to other work in the national economy, a finding of “disabled” is  
8 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### 9 ADMINISTRATIVE DECISION

10 On January 21, 2016, the ALJ issued a decision finding Plaintiff was not  
11 disabled as defined in the Social Security Act.

12 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
13 activity since May 1, 2009, the alleged onset date. Tr. 18.

14 At step two, the ALJ determined Plaintiff had the following severe  
15 impairments: depression, posttraumatic stress disorder (PTSD), borderline  
16 personality disorder, and polysubstance abuse in intermittent remission. Tr. 18.

17 At step three, the ALJ found Plaintiff did not have an impairment or  
18 combination of impairments that meets or medically equals the severity of one of  
19 the listed impairments. Tr. 19.

20 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and found  
21 Plaintiff could perform a full range of work at all exertional levels, but with the  
22 following nonexertional limitations: he is able to remember, understand, and carry  
23 out instructions and tasks generally required by occupations with an SVP of one to  
24 two and have only occasional interactions with the general public. Tr. 22.

25 At step four, the ALJ found Plaintiff was able to perform his past relevant  
26 work as a cook helper and stores laborer. Tr. 29.

27 Alternatively, the ALJ determined at step five that, based on the testimony  
28 of the vocational expert, and considering Plaintiff’s age, education, work

1 experience and RFC, Plaintiff was capable of making a successful adjustment to  
2 other work that exists in significant numbers in the national economy, including  
3 the jobs of landscape laborer, industrial cleaner, production assembler, document  
4 preparer, escort vehicle driver, and assembler. Tr. 29-30.

5 The ALJ thus concluded Plaintiff was not under a disability within the  
6 meaning of the Social Security Act at any time from May 1, 2009, the alleged  
7 onset date, through the date of the ALJ's decision, January 21, 2016. Tr. 29-31.

## 8 ISSUES

9 The question presented is whether substantial evidence supports the ALJ's  
10 decision denying benefits and, if so, whether that decision is based on proper legal  
11 standards.

12 Plaintiff contends the ALJ erred by (1) failing to properly weigh the medical  
13 opinion evidence of record; (2) failing to take into consideration and assess  
14 Plaintiff's obesity and associated limitations; and (3) improperly discrediting  
15 Plaintiff's symptom testimony.

## 16 DISCUSSION

### 17 A. Medical Opinion Evidence

18 Plaintiff contends the ALJ erred by failing to properly consider the medical  
19 opinion evidence of record. ECF No. 15 at 4-18. Plaintiff specifically asserts the  
20 ALJ erred by giving little to no weight to the reports of treating physician Caryn  
21 Jackson, M.D., examiner Phillip Barnard, Ph.D., examiner R.A. Cline, Psy.D., and  
22 medical professionals Sonya Starr, ARNP, Amelia Rutter, ARNP, and Laurie  
23 Jones, LMFT, MSW. *Id.*

24 In a disability proceeding, the courts distinguish among the opinions of three  
25 types of acceptable medical sources: treating physicians, physicians who examine  
26 but do not treat the claimant (examining physicians) and those who neither  
27 examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81  
28 F.3d 821, 830 (9th Cir. 1996). A treating physician's opinion carries more weight

1 than an examining physician's opinion, and an examining physician's opinion is  
2 given more weight than that of a nonexamining physician. *Benecke v. Barnhart*,  
3 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830.

4 The opinion of an acceptable medical source is given more weight than that  
5 of an "other source." 20 C.F.R. §§ 404.1527, 416.927; *Gomez v. Chater*, 74 F.3d  
6 967, 970-71 (9th Cir. 1996). "Other sources" include nurse practitioners,  
7 physicians' assistants, therapists, teachers, social workers, spouses and other non-  
8 medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d). The ALJ is required to  
9 "consider observations by non-medical sources as to how an impairment affects a  
10 claimant's ability to work." Pursuant to *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.  
11 1993), an ALJ shall provide germane reasons for discounting "other source"  
12 testimony.

13 In making findings regarding the medical opinion evidence of record, the  
14 ALJ must set forth specific, legitimate reasons that are based on substantial  
15 evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).  
16 Moreover, the ALJ is required to set forth the reasoning behind his or her decisions  
17 in a way that allows for meaningful review. *Brown-Hunter v. Colvin*, 806 F.3d  
18 487, 492 (9th Cir. 2015) (finding a clear statement of the agency's reasoning is  
19 necessary because the Court can affirm the ALJ's decision to deny benefits only on  
20 the grounds invoked by the ALJ). "Although the ALJ's analysis need not be  
21 extensive, the ALJ must provide some reasoning in order for us to meaningfully  
22 determine whether the ALJ's conclusions were supported by substantial evidence."  
23 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014).

24 **1. Dr. Jackson**

25 Dr. Jackson, Plaintiff's primary care physician, Tr. 603, completed a  
26 physical functional evaluation of Plaintiff on March 22, 2013, and determined that  
27 Plaintiff would be limited to sedentary exertion level work, Tr. 455. Dr. Jackson  
28 diagnosed moderate to severe depression, fatigue/malaise, history of drug abuse in

1 remission, and restless leg syndrome and opined that Plaintiff was in need of  
2 ongoing mental health treatment. Tr. 454-455.

3 The ALJ referred to Dr. Jackson as “Ms. Jackson” and questioned whether  
4 Dr. Jackson had the expertise to determine the physical limitations and pain level  
5 that would result from lower back pain as well as depression, anxiety, fatigue and  
6 drug abuse. Tr. 26. The ALJ accorded “no weight” to “Ms. Jackson’s” physical  
7 assessment, finding it lacked evidence to support the opinion and was inconsistent  
8 with her own observations of Plaintiff’s performance on exam. Tr. 26.

9 First, it appears the ALJ improperly determined that Dr. Jackson, who has a  
10 medical degree, was not an acceptable medical source and unqualified to assess  
11 Plaintiff’s functional capacity. Tr. 26. While the regulations generally give more  
12 weight to the medical opinion of a specialist about medical issues related to his or  
13 her area of specialty than to the medical opinion of a source who is not a specialist,  
14 20 C.F.R. § 404.1527(d)(5); *see Holohan v. Massanari*, 246 F.3d 1195, 1202 n. 2  
15 (9th Cir. 2001), Dr. Jackson, an acceptable treating medical source, was fully  
16 qualified to opine regarding Plaintiff’s symptoms and corresponding limitations.  
17 This was not a proper basis to reject Dr. Jackson’s opinions.

18 Next, with respect to the ALJ’s finding that Dr. Jackson’s opinion lacked  
19 support and was inconsistent, the record demonstrates Dr. Jackson provided  
20 support for her determinations. Tr. 378-381. Dr. Jackson provided a discussion of  
21 Plaintiff’s symptoms including fatigue, irritability, abdominal pain, anxiety,  
22 depression, difficulty concentrating, fearfulness, headache, inability to focus, mood  
23 swings, obsessiveness, psychiatric symptoms, sleep disturbance and suicidal  
24 ideation. Tr. 378, 379-380. Dr. Jackson further noted Plaintiff’s fatigue and  
25 malaise were related to his depression. Tr. 378. The ALJ’s finding that Dr.  
26 Jackson’s opinion lacked support and was internally inconsistent is not supported  
27 by substantial evidence.

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1 The Court concludes the ALJ erred by failing to provide cogent, specific,  
2 and legitimate reasons for rejecting treating physician Jackson's opinion that  
3 Plaintiff would be limited to sedentary exertion level work. A remand is required  
4 for reconsideration of Dr. Jackson's physical assessment and for further  
5 development of the record in this case.

## 6 **2. Dr. Barnard**

7 On September 26, 2013, Dr. Barnard performed a consultative psychological  
8 evaluation. Tr. 585-589. Dr. Barnard diagnosed dysthymic disorder;  
9 polysubstance dependence; and personality disorder, not otherwise specified  
10 (NOS), with features of borderline and antisocial. Tr. 586. He opined that  
11 Plaintiff would have marked limitations in his abilities to communicate and  
12 perform effectively in a work setting, to complete a normal work day and work  
13 week without interruptions from psychologically based symptoms, and to maintain  
14 appropriate behavior in a work setting. Tr. 587. Dr. Barnard recommended a  
15 drug/alcohol evaluation. Tr. 588.

16 The ALJ rejected the report of Dr. Barnard because it was "formed at a time  
17 when the claimant might have been clean and sober from spice and alcohol for four  
18 months at most" and because "a clear picture of his functioning without substance  
19 abuse would be difficult to formulate." Tr. 28. This is improper rationale to  
20 accord no weight to Dr. Barnard's opinions.

21 Inconsistent with these findings, the ALJ accorded "some weight" to the  
22 opinion of Dr. Cline specifically because it was rendered "at a time when the  
23 claimant had been clean for about four to five months." Tr. 27-28. Nevertheless,  
24 an ALJ must consider whether the claimant is under a disability considering all of  
25 the claimant's impairments, including drug and alcohol abuse ("DAA"). 20 C.F.  
26 .R. §§ 404.1535(a), 416.935(a). If the ALJ concludes the claimant's impairments,  
27 including DAA, are disabling, the Commissioner then must determine whether  
28 DAA is a "material factor" contributing to the disability. 20 C.F.R. §§



1 404.1535(a), 416.935(a). While it may have been difficult for the ALJ to  
2 formulate a clear picture of Plaintiff's functioning without substance abuse, Tr. 28,  
3 this is an ALJ's duty. *See Bustamante v. Massanari*, 262 F.3d 949 (9th Cir. 2001).  
4 If it is not possible for the ALJ to separate out the effects of DAA from a  
5 claimant's other impairments, a finding of 'not material' would be appropriate.  
6 SSR 13-2p. Here, however, Dr. Barnard specifically reported that Plaintiff's  
7 impairments were not primarily the result of alcohol or drug use within the past 60  
8 days. Tr. 588.

9 The ALJ also indicated Dr. Barnard's opinion was entitled to no weight  
10 because Plaintiff reported he was getting better and showed appropriate  
11 appearance, speech and affect as well as maintained attention, intact memory and  
12 logical thought processes. Tr. 28. Dr. Barnard's findings are the result of his  
13 assessment of Plaintiff's functioning at the time of the September 2013  
14 examination, regardless of other evidence of Plaintiff's improvement of symptoms.  
15 Even if Plaintiff's symptoms had improved, Dr. Barnard's examination results still  
16 reflected his determination that Plaintiff had marked limitations at that time. The  
17 ALJ's reasoning is flawed.

18 Based on the foregoing, the ALJ should additionally reassess the evaluation  
19 of Dr. Barnard and provide a detailed analysis related to the weight assigned to his  
20 opinions, including the assessed marked limitations.

### 21 **3. Dr. Cline**

22 Dr. Cline completed a Psychological/Psychiatric Evaluation of Plaintiff on  
23 July 31, 2014. Tr. 611-616. Dr. Cline diagnosed major depressive disorder,  
24 recurrent, moderate; PTSD; anxiety disorder, NOS, with features of GAD;  
25 methamphetamine use disorder, marked, in early full remission; alcohol use  
26 disorder, marked, in early full remission; marijuana use disorder, severe, in early  
27 full remission; cocaine use disorder, in sustained full remission; personality  
28 disorder, NOS, with features of borderline and antisocial; and personality

1 disorders. Tr. 613. Dr. Cline opined that Plaintiff would have a marked limitation  
2 in his ability to complete a normal work day and work week without interruptions  
3 from psychologically based symptoms. Tr. 614. He indicated that with continued  
4 sobriety, Plaintiff should experience at least a modest decrease in his mental health  
5 symptoms. Tr. 614.

6 The ALJ accorded “little weight” to Dr. Cline’s assessed marked limitation,  
7 indicating it was not consistent with the contemporary mental status examinations  
8 and the observations of Plaintiff’s performance in other evaluations when he had  
9 been clean and sober. Tr. 27.

10 The ALJ failed to describe what specific evidence contradicted the opinions  
11 of Dr. Cline. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)  
12 (finding the agency must set forth reasoning behind its decisions in a way that  
13 allows for meaningful review). If the ALJ fails to specify his rationale, a  
14 reviewing court will be unable to review those reasons meaningfully without  
15 improperly “substitut[ing] our conclusions for the ALJ’s, or speculat[ing] as to the  
16 grounds for the ALJ’s conclusions.” *Brown-Hunter*, 806 F.3d at 492 quoting  
17 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014).  
18 Because the ALJ failed to identify what specifically contradicted the medical  
19 opinions of Dr. Cline, the Court finds this basis to discount the report is not  
20 properly supported.

21 Nevertheless, the Court finds that Dr. Cline’s opinions are supported by the  
22 examination notes and other evidence of record. As determined by the ALJ, the  
23 mental status examination showed some abnormalities in Plaintiff’s cognitive  
24 functioning. Tr. 27, 615. Plaintiff had only 2/3 recall after a short delay  
25 (somewhat below average), could repeat seven digits forward but only four  
26 backwards indicating a working memory problem, and could not complete serial  
27 subtractions without errors. Tr. 615. Moreover, as noted in Plaintiff’s brief, other  
28 evaluations throughout the record found insight or judgment limitations, poor

1 attention and concentration, and suicidal ideation. ECF No. 15 at 13 (indicating  
2 multiple citations for support).

3 Consequently, the Court finds the ALJ erred by failing to provide cogent,  
4 specific, and legitimate reasons for according “little weight” to Dr. Cline’s opinion  
5 that Plaintiff would be markedly limited in his ability to complete a normal work  
6 day and work week without interruptions from psychologically based symptoms.

#### 7 **4. Nurses Starr and Rutter**

8 Nurse Starr and Nurse Rutter each filled out a “Medical Report” generated  
9 by Plaintiff’s attorney, Mr. Tree. Tr. 458-459, 803-804. On September 26, 2013,  
10 Ms. Starr opined Plaintiff would miss four or more days of work per month due to  
11 his medical impairments. Tr. 459. On June 2, 2015, Ms. Rutter reached the same  
12 conclusion. Tr. 804. The ALJ accorded “no weight” to these other source  
13 opinions. Tr. 28.

14 Although the undersigned agrees with the ALJ that Ms. Starr’s opinion on  
15 the report appears to be based at least in part on Plaintiff’s self-report and finds the  
16 opinions of the two nurses are not well supported, the rationale for according no  
17 weight to their opinions is not particularly convincing. Since this matter must be  
18 remanded for additional proceedings to remedy the aforementioned defects with  
19 the medical opinion evidence of record, the ALJ shall additionally be directed to  
20 reconsider and readdress the “Medical Reports” of Nurses Starr and Rutter.

#### 21 **5. Ms. Jones**

22 On September 27, 2013, Ms. Jones filled out a Mental Residual Functional  
23 Capacity Assessment form regarding Plaintiff. Tr. 460-462. Ms. Jones checked  
24 boxes indicating that Plaintiff was markedly limited in 15 out of 20 categories of  
25 mental functioning. *Id.*

26 The ALJ rejected the report of Ms. Jones for the same reasons he rejected  
27 Dr. Barnard’s opinion (“formed at a time when the claimant might have been clean  
28 and sober from spice and alcohol for four months at most” and “a clear picture of

1 his functioning without substance abuse would be difficult to formulate”) and  
2 additionally noted that Ms. Jones treating relationship was brief and she did not  
3 provide any explanation for her opinions. Tr. 28.

4 As indicated above, the ALJ’s substance abuse rationale is inconsistent and  
5 flawed. *See supra*. Furthermore, Ms. Jones, Plaintiff’s therapist, had been treating  
6 Plaintiff for a year before completing the form opinion. Tr. 438. Accordingly, the  
7 ALJ shall additionally be required to reconsider and readdress the opinions of  
8 therapist Jones on remand.

9 The ALJ’s assessment of Plaintiff’s functioning is not supported by  
10 substantial evidence. Plaintiff’s RFC must be redetermined, on remand, taking  
11 into consideration the opinions of the medical professionals noted above, as well as  
12 any additional or supplemental evidence relevant to Plaintiff’s claim for disability  
13 benefits. This matter will be remanded for additional proceedings in order for the  
14 ALJ to further develop the record, take into consideration Plaintiff’s physical and  
15 psychological impairments, and assess the limitations Plaintiff’s impairments have  
16 on his functionality.

## 17 **B. Obesity**

18 Plaintiff next contends the ALJ erred by failing to properly assess his  
19 obesity. ECF No. 15 at 18-19.

20 Plaintiff has the burden of proving that he has a severe impairment at step  
21 two of the sequential evaluation process. 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. §  
22 423(d)(1)(A), 416.912. In order to meet this burden, Plaintiff must furnish medical  
23 and other evidence that shows he has a severe impairment. 20 C.F.R. §  
24 416.912(a). The regulations, 20 C.F.R. §§ 404.1520(c), 416.920(c), provide that  
25 an impairment is severe if it significantly limits one’s ability to perform basic work  
26 activities. An impairment is considered non-severe if it “does not significantly  
27 limit your physical or mental ability to do basic work activities.” 20 C.F.R. §§

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1 404.1521, 416.921. “Basic work activities” are defined as the abilities and  
2 aptitudes necessary to do most jobs. 20 C.F.R. §§ 404.1521(b), 416.921(b).

3 Plaintiff’s disability report fails to mention obesity as an issue causing his  
4 alleged disability. *See* Tr. 254 (alleging only depression, sciatic nerve, lower back  
5 problems, hernia and anxiety as conditions that limit Plaintiff’s ability to work).  
6 Moreover, Plaintiff did not raise his obesity as restricting his functionality at the  
7 time of the administrative hearing. Without more, it appears the ALJ’s assessment  
8 of the record with respect to Plaintiff’s weight and BMI was not flawed.  
9 Nevertheless, given the ALJ’s erroneous determinations regarding the medical  
10 opinion evidence of record and the resultant necessity of a remand to remedy those  
11 defects, the ALJ shall also reexamine Plaintiff’s physical limitations and  
12 specifically address the impact of Plaintiff’s obesity, if any.

### 13 **C. Plaintiff’s Subjective Complaints**

14 Plaintiff also contends the ALJ erred by improperly discrediting his  
15 symptom claims. ECF No. 15 at 19-21.

16 It is the province of the ALJ to make credibility determinations. *Andrews*,  
17 53 F.3d at 1039. However, the ALJ’s findings must be supported by specific  
18 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once  
19 the claimant produces medical evidence of an underlying medical impairment, the  
20 ALJ may not discredit testimony as to the severity of an impairment because it is  
21 unsupported by medical evidence. *Reddick*, 157 F.3d 715, 722 (9th Cir. 1998).  
22 Absent affirmative evidence of malingering, the ALJ’s reasons for rejecting the  
23 claimant’s testimony must be “specific, clear and convincing.” *Smolen*, 80 F.3d at  
24 1281; *Lester*, 81 F.3d at 834. “General findings are insufficient: rather the ALJ  
25 must identify what testimony is not credible and what evidence undermines the  
26 claimant’s complaints.” *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,  
27 918 (9th Cir. 1993).

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1 The ALJ concluded Plaintiff's medically determinable impairments could  
2 reasonably be expected to cause some of the alleged symptoms; however,  
3 Plaintiff's statements concerning the intensity, persistence and limiting effects of  
4 those symptoms were not entirely credible. Tr. 23. The ALJ listed the following  
5 reasons for finding Plaintiff's subjective complaints only partially credible in this  
6 case: (1) Plaintiff failed to follow medical treatment advice by not taking his  
7 prescribed medications and by failing to stay clean and sober; (2) the record  
8 reflected Plaintiff's symptoms improved with treatment; (3) Plaintiff's alleged  
9 symptoms were caused by situational stressors, not his medically determinable  
10 impairments; (4) Plaintiff's activities were inconsistent with his allegations of  
11 disabling functional limitations; and (5) Plaintiff's lack of employment was related  
12 to other factors (i.e. illicit drug use) rather than limitations stemming from his  
13 impairments. Tr. 23-26.

14 While some of the reasons provided by the ALJ for discounting Plaintiff's  
15 testimony may be supported by the evidence of record, this matter must be  
16 remanded for additional proceedings to remedy defects in light of the ALJ's  
17 erroneous determination regarding the medical opinion evidence of record.  
18 Accordingly, on remand, the ALJ shall also reconsider Plaintiff's statements and  
19 testimony and reassess what statements, if any, are not credible and, if deemed not  
20 credible, what specific evidence undermines those statements.

## 21 CONCLUSION

22 Plaintiff argues the ALJ's decision should be reversed and remanded for an  
23 immediate award benefits. The Court has the discretion to remand the case for  
24 additional evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292.  
25 The Court may award benefits if the record is fully developed and further  
26 administrative proceedings would serve no useful purpose. *Id.* Remand is  
27 appropriate when additional administrative proceedings could remedy defects.

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1 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
2 finds that further development is necessary for a proper determination to be made.

3 On remand, the ALJ shall reconsider Plaintiff's physical and psychological  
4 limitations and specifically address the impact of Plaintiff's obesity, if any. The  
5 ALJ shall reconsider the opinions of Drs. Jackson, Barnard, and Cline and all other  
6 medical evidence of record, including nurses Starr and Rutter and therapist Jones.  
7 The ALJ shall further develop the record by directing Plaintiff to undergo  
8 consultative physical and psychological examinations and/or by eliciting the  
9 testimony of a medical expert or experts at a new administrative hearing to assist  
10 the ALJ in formulating a new RFC determination. The ALJ shall also reevaluate  
11 Plaintiff's statements and testimony, obtain supplemental testimony from a  
12 vocational expert, if necessary, and take into consideration any other evidence or  
13 testimony relevant to Plaintiff's disability claim.

14 If, on remand, the ALJ determines Plaintiff is disabled and his disability  
15 involves DAA, the ALJ shall conduct an additional analysis. The ALJ must  
16 consider first whether Plaintiff is under a disability considering all of the Plaintiff's  
17 impairments, including DAA. 20 C.F.R. §§ 404.1535(a), 416.935(a). But DAA  
18 may not serve as an independent basis for a disability finding. 42 U.S.C. §  
19 423(d)(2)(C) ("An individual shall not be considered to be disabled for purposes of  
20 this subchapter if alcoholism or drug addiction would . . . be a contributing factor  
21 material to the Commissioner's determination that the individual is disabled."). If  
22 the ALJ concludes Plaintiff's impairments, including DAA, are disabling, the ALJ  
23 must then determine whether DAA is a "material factor" contributing to the  
24 disability, i.e., whether Plaintiff's impairments would disable him independent of  
25 the limitations resulting from DAA. 20 C.F.R. §§ 404.1535(a), 416.935(a).

26 **IT IS ORDERED:**

27 1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is  
28 **GRANTED IN PART.**

1           2.     Defendant's Motion for Summary Judgment, **ECF No. 16**, is  
2 **DENIED**.

3           3.     The matter is **REMANDED** to the Commissioner for additional  
4 proceedings consistent with this Order.

5           4.     An application for attorney fees may be filed by separate motion.

6           The District Court Executive is directed to file this Order and provide a copy  
7 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
8 the file shall be **CLOSED**.

9           DATED February 28, 2018.

A handwritten signature in black ink, consisting of stylized, flowing letters that appear to read "J. T. Rodgers".

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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE